

AMENDED IN SENATE JUNE 19, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2850

Introduced by Assembly Member Spitzer

February 24, 2006

An act to amend Sections 296.1, 297, and 298.1 of the Penal Code, relating to DNA testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2850, as amended, Spitzer. DNA testing.

(1) Existing law requires persons who are arrested for, charged with, or convicted of specified crimes to provide biological samples for law enforcement identification, as specified. Existing law provides that these provisions shall apply retroactively to specified offenders and that collection of required specimens, samples, and print impressions shall occur regardless of when the crime charged or committed became a qualifying offense and regardless of when the person was convicted of the qualifying offense or a similar crime.

~~This bill would state the intent of the Legislature to codify the official view of the Department of Justice regarding classes of persons who are subject to DNA collection, as specified, and would remove persons who have been arrested for or charged with a felony sexual offense or attempt to commit a felony sexual offense requiring registration and persons who have been arrested for or charged with murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter from retroactive application of these provisions. This bill would also remove provisions that would have~~

~~required that commencing January 1, 2009, biological samples also be provided by persons who are arrested for, or charged with, any felony offense.~~

This bill would exclude from retroactive application the requirement to collect a sample from any person upon the conviction of the person for any felony offense and any juvenile upon the adjudication of the juvenile for any felony offense.

(2) Existing law provides that specified accredited laboratories are authorized to analyze crime scene samples and perform anonymous analysis of specimens and samples for forensic identification, as specified.

This bill would change the accreditation required of these laboratories, as specified. This bill would also provide that laboratories of the Department of Justice and designated public law enforcement crime laboratories may upload to available DNA and forensic identification databanks, as specified.

(3) Existing law provides that authorized law enforcement, custodial, or corrections ~~personal~~ *personnel*, including peace officers, may employ reasonable force to collect biological samples from individuals who refuse to provide those samples, as required by law.

This bill would include the officers of a state mental hospital among those peace officers who may collect those samples as described above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~It is the intent of the Legislature in enacting~~
2 ~~Sections 2 and 4 of this measure to codify the official view of the~~
3 ~~Department of Justice regarding classes of persons who are~~
4 ~~subject to DNA collection pursuant to Proposition 69, as stated in~~
5 ~~the Information Bulletin issued by the department on January 11,~~
6 ~~2005.~~

7 ~~SEC. 2.~~ Section 296.1 of the Penal Code is amended to read:

8 296.1. (a) The specimens, samples, and print impressions
9 required by this chapter shall be collected from persons described
10 in subdivision (a) of Section 296 for present and past qualifying
11 offenses of record as follows:

1 (1) Collection from any adult person following arrest for a
2 felony offense as specified in subparagraphs (A), (B), and (C) of
3 paragraph (2) of subdivision (a) of Section 296:

4 (A) Each adult person arrested for a felony offense as
5 specified in subparagraphs (A), (B), and (C) of paragraph (2) of
6 subdivision (a) of Section 296 shall provide the buccal swab
7 samples and thumb and palm print impressions and any blood or
8 other specimens required pursuant to this chapter immediately
9 following arrest, or during the booking or intake or *prison*
10 reception center process or as soon as administratively
11 practicable after arrest, but, in any case, prior to release on bail or
12 pending trial or any physical release from confinement or
13 custody.

14 (B) If the person subject to this chapter did not have
15 specimens, samples, and print impressions taken immediately
16 following arrest or during booking or intake procedures or is
17 released on bail or pending trial or is not confined or incarcerated
18 at the time of sentencing or otherwise bypasses a prison inmate
19 reception center maintained by the Department of Corrections
20 *and Rehabilitation*, the court shall order the person to report
21 within five calendar days to a county jail facility or to a city,
22 state, local, private, or other designated facility to provide the
23 required specimens, samples, and print impressions in
24 accordance with subdivision (i) of Section 295.

25 (2) Collection from persons confined or in custody after
26 conviction or adjudication:

27 (A) Any person, including any juvenile who is imprisoned or
28 confined or placed in a state correctional institution, a county jail,
29 a facility within the jurisdiction of the Department of Corrections
30 and Rehabilitation, the Corrections Standards Authority, a
31 residential treatment program, or any state, local, city, private, or
32 other facility after a conviction of any felony or misdemeanor
33 offense, or any adjudication or disposition rendered in the case of
34 a juvenile, whether or not that crime or offense is one set forth in
35 subdivision (a) of Section 296, shall provide buccal swab
36 samples and thumb and palm print impressions and any blood or
37 other specimens required pursuant to this chapter, immediately at
38 intake, or during the prison reception center process, or as soon
39 as administratively practicable at the appropriate custodial or

1 receiving institution or ~~placed in program~~ *the program in which*
2 *the person is placed*, if:

3 (i) The person has a record of any past or present conviction or
4 adjudication as a ward of the court in California of a qualifying
5 offense described in subdivision (a) of Section 296 or has a
6 record of any past or present conviction or adjudication in any
7 other court, including any state, federal, or military court, of any
8 offense that, if committed or attempted in this state, would have
9 been punishable as an offense described in subdivision (a) of
10 Section 296; and

11 (ii) The person's blood specimens, buccal swab samples, and
12 thumb and palm print impressions authorized by this chapter are
13 not in the possession of the Department of Justice DNA
14 Laboratory or have not been recorded as part of the department's
15 DNA databank program.

16 (3) Collection from persons on probation, parole, or other
17 release:

18 (A) Any person, including any juvenile, who has a record of
19 any past or present conviction or adjudication for an offense set
20 forth in subdivision (a) of Section 296, and who is on probation
21 or parole for any felony or misdemeanor offense, whether or not
22 that crime or offense is one set forth in subdivision (a) of Section
23 296, shall provide buccal swab samples and thumb and palm
24 print impressions and any blood specimens required pursuant to
25 this chapter, if:

26 (i) The person has a record of any past or present conviction or
27 adjudication as a ward of the court in California of a qualifying
28 offense described in subdivision (a) of Section 296 or has a
29 record of any past or present conviction or adjudication in any
30 other court, including any state, federal, or military court, of any
31 offense that, if committed or attempted in this state, would have
32 been punishable as an offense described in subdivision (a) of
33 Section 296; and

34 (ii) The person's blood specimens, buccal swab samples, and
35 thumb and palm print impressions authorized by this chapter are
36 not in the possession of the Department of Justice DNA
37 Laboratory or have not been recorded as part of the department's
38 DNA databank program.

39 (B) The person shall have any required specimens, samples,
40 and print impressions collected within five calendar days of

1 being notified by the court, or a law enforcement agency or other
2 agency authorized by the Department of Justice. The specimens,
3 samples, and print impressions shall be collected in accordance
4 with subdivision (i) of Section 295 at a county jail facility or a
5 city, state, local, private, or other facility designated for this
6 collection.

7 (4) Collection from parole violators and others returned to
8 custody:

9 (A) If a person, including any juvenile, who has been released
10 on parole, furlough, or other release for any offense or crime,
11 whether or not set forth in subdivision (a) of Section 296, is
12 returned to a state correctional or other institution for a violation
13 of a condition of his or her parole, furlough, or other release, or
14 for any other reason, that person shall provide buccal swab
15 samples and thumb and palm print impressions and any blood or
16 other specimens required pursuant to this chapter, at a state
17 correctional or other receiving institution, if:

18 (i) The person has a record of any past or present conviction or
19 adjudication as a ward of the court in California of a qualifying
20 offense described in subdivision (a) of Section 296 or has a
21 record of any past or present conviction or adjudication in any
22 other court, including any state, federal, or military court, of any
23 offense that, if committed or attempted in this state, would have
24 been punishable as an offense described in subdivision (a) of
25 Section 296; and

26 (ii) The person's blood specimens, buccal swab samples, and
27 thumb and palm print impressions authorized by this chapter are
28 not in the possession of the Department of Justice DNA
29 Laboratory or have not been recorded as part of the department's
30 DNA databank program.

31 (5) Collection from persons accepted into California from
32 other jurisdictions:

33 (A) When an offender from another state is accepted into this
34 state under any of the interstate compacts described in Article 3
35 (commencing with Section 11175) or Article 4 (commencing
36 with Section 11189) of Chapter 2 of Title 1 of Part 4 of this code,
37 or Chapter 4 (commencing with Section 1300) of Part 1 of
38 Division 2 of the Welfare and Institutions Code, or under any
39 other reciprocal agreement with any county, state, or federal
40 agency, or any other provision of law, whether or not the

1 offender is confined or released, the acceptance is conditional on
2 the offender providing blood specimens, buccal swab samples,
3 and palm and thumb print impressions pursuant to this chapter, if
4 the offender has a record of any past or present conviction or
5 adjudication in California of a qualifying offense described in
6 subdivision (a) of Section 296 or has a record of any past or
7 present conviction or adjudication or had a disposition rendered
8 in any other court, including any state, federal, or military court,
9 of any offense that, if committed or attempted in this state, would
10 have been punishable as an offense described in subdivision (a)
11 of Section 296.

12 (B) If the person is not confined, the specimens, samples, and
13 print impressions required by this chapter must be provided
14 within five calendar days after the person reports to the
15 supervising agent or within five calendar days of notice to the
16 person, whichever occurs first. The person shall report to a
17 county jail facility in the county where he or she resides or
18 temporarily is located to have the specimens, samples, and print
19 impressions collected pursuant to this chapter. The specimens,
20 samples, and print impressions shall be collected in accordance
21 with subdivision (i) of Section 295.

22 (C) If the person is confined, he or she shall provide the blood
23 specimens, buccal swab samples, and thumb and palm print
24 impressions required by this chapter as soon as practicable after
25 his or her receipt in a state, county, city, local, private, or other
26 designated facility.

27 (6) Collection from persons in federal institutions:

28 (A) Subject to the approval of the Director of the FBI, persons
29 confined or incarcerated in a federal prison or federal institution
30 who have a record of any past or present conviction or juvenile
31 adjudication for a qualifying offense described in subdivision (a)
32 of Section 296, or of a similar crime under the laws of the United
33 States or any other state that would constitute an offense
34 described in subdivision (a) of Section 296, are subject to this
35 chapter and shall provide blood specimens, buccal swab samples,
36 and thumb and palm print impressions pursuant to this chapter if
37 any of the following apply:

38 (i) The person committed a qualifying offense in California.

39 (ii) The person was a resident of California at the time of the
40 qualifying offense.

1 (iii) The person has any record of a California conviction for
2 an offense described in subdivision (a) of Section 296, regardless
3 of when the crime was committed.

4 (iv) The person will be released in California.

5 (B) The Department of Justice DNA Laboratory shall, upon
6 the request of the United States Department of Justice, forward
7 portions of the specimens or samples, taken pursuant to this
8 chapter, to the United States Department of Justice DNA
9 databank laboratory. The specimens and samples required by this
10 chapter shall be taken in accordance with the procedures set forth
11 in subdivision (i) of Section 295. The Department of Justice
12 DNA Laboratory is authorized to analyze and upload specimens
13 and samples collected pursuant to this section upon approval of
14 the Director of the FBI.

15 (b) Paragraphs (2), (3), (4), (5), and (6) of subdivision (a) shall
16 have retroactive application. Collection shall occur pursuant to
17 paragraphs (2), (3), (4), (5), and (6) of subdivision (a) regardless
18 of when the crime charged or committed became a qualifying
19 offense pursuant to this chapter, and regardless of when the
20 person was convicted of the qualifying offense described in
21 subdivision (a) of Section 296 or a similar crime under the laws
22 of the United States or any other state, or pursuant to the United
23 States Code of Military Justice, 10 U.S.C., Sections 801 and
24 following, or when a juvenile petition is sustained for
25 commission of a qualifying offense described in subdivision (a)
26 of Section 296 or a similar crime under the laws of the United
27 States or any other state.

28 ~~SEC. 3.~~

29 *SEC. 2.* Section 297 of the Penal Code is amended to read:

30 297. (a) ~~Only~~ *Subject to the limitations in paragraph (3) of*
31 *this subdivision, only* the following laboratories are authorized to
32 analyze crime scene samples and other forensic identification
33 samples of known and unknown origin and to upload and
34 compare those profiles against available *state and national* DNA
35 and forensic identification databanks and databases in order to
36 establish identity *and origin* of samples for forensic identification
37 purposes *pursuant to this Chapter*:

38 (1) The DNA laboratories of the Department of Justice that
39 meet state and federal requirements, including the Federal
40 Bureau of Investigation (FBI) Quality Assurance Standards, and

1 that are accredited by an organization approved by the National
2 DNA Index System (NDIS) Procedures Board.

3 (2) ~~Designated public~~ *Public* law enforcement crime
4 laboratories *designated by the Department of Justice* that meet
5 state and federal requirements, including the FBI Quality
6 Assurance Standards, and that are accredited by an organization
7 approved by the NDIS Procedures Board.

8 (3) *Only the laboratories of the Department of Justice that*
9 *meet the requirements of paragraph (1) of subdivision (a) are*
10 *authorized to upload DNA profiles from arrestees and other*
11 *qualifying offender samples collected pursuant to this section,*
12 *Section 296, and Section 296.2.*

13 (b) The laboratories of the Department of Justice and
14 ~~designated public law enforcement crime laboratories~~ *may that*
15 *meet the requirements of subdivision (a) may, subject to the*
16 *laboratory's discretion, and the limitations of paragraph (3) of*
17 *subdivision (a), upload to available state and national DNA and*
18 *forensic identification databanks and databases* *qualifying DNA*
19 *profiles from forensic identification samples of known and*
20 *unknown origin that are generated by private forensic*
21 *laboratories that meet state and federal requirements, including*
22 *the FBI Quality Assurance Standards, and that are accredited by*
23 *an organization approved by the NDIS Procedures Board. Prior*
24 *to uploading DNA profiles generated by a private laboratory, the*
25 *public laboratory shall conduct the quality assessment and*
26 *review required by the FBI Quality Assurance Standards.*

27 (c) (1) A biological sample obtained from a suspect in a
28 criminal investigation for the commission of any crime may be
29 analyzed for forensic identification profiles, including DNA
30 profiles, by the DNA Laboratory of the Department of Justice or
31 any law enforcement crime laboratory or private forensic
32 laboratory that meets all of the FBI Quality Assurance Standards
33 and accreditation requirements in paragraphs (1) and (2) of
34 subdivision (a) and then compared by the Department of Justice
35 in and between as many cases and investigations as necessary,
36 and searched against the forensic identification profiles,
37 including DNA profiles, stored in the files of the Department of
38 Justice DNA databank or database or any available databanks or
39 databases as part of the Department of Justice DNA Database
40 and databank Program.

1 (2) The law enforcement investigating agency submitting a
2 specimen, sample, or print impression to the DNA Laboratory of
3 the Department of Justice or law enforcement crime laboratory
4 pursuant to this section shall inform the Department of Justice
5 DNA Laboratory within two years whether the person remains a
6 suspect in a criminal investigation. Upon written notification
7 from a law enforcement agency that a person is no longer a
8 suspect in a criminal investigation, the Department of Justice
9 DNA Laboratory shall remove the suspect sample from its
10 databank files *and databases*. However, any identification,
11 warrant, arrest, or prosecution based upon a databank or database
12 match shall not be invalidated or dismissed due to a failure to
13 purge or delay in purging records.

14 (d) All laboratories, including the Department of Justice DNA
15 laboratories, contributing DNA profiles for inclusion in
16 California's DNA databank shall meet state and federal
17 requirements, including the FBI Quality Assurance Standards
18 and accreditation requirements, and shall be accredited by an
19 organization approved by the ~~NDSI~~ *National DNA Index System*
20 *(NDIS)* Procedures Board. Additionally, each laboratory shall
21 submit to the Department of Justice for review the annual report
22 required by the submitting laboratory's accrediting organization
23 that documents the laboratory's adherence to FBI Quality
24 Assurance Standards and the standards of the accrediting
25 organization. The requirements of this subdivision do not
26 preclude DNA profiles developed in California from being
27 searched in the ~~National DNA Index System (NDIS)~~ *NDIS*.

28 (e) Nothing in this section precludes local law enforcement
29 DNA laboratories from maintaining local forensic databases and
30 databanks or performing forensic identification analyses,
31 including DNA profiling, independently from the Department of
32 Justice DNA *laboratories* and Forensic Identification Data Base
33 and databank Program.

34 (f) The limitation on the types of offenses set forth in
35 subdivision (a) of Section 296 as subject to the collection and
36 testing procedures of this chapter is for the purpose of facilitating
37 the administration of this chapter by the Department of Justice,
38 and shall not be considered cause for dismissing an investigation
39 or prosecution or reversing a verdict or disposition.

(g) The detention, arrest, wardship, adjudication, or conviction of a person based upon a databank match or database information is not invalidated if it is determined that the specimens, samples, or print impressions were obtained or placed or retained in a databank or database by mistake.

SEC. 4. Section 298.1 of the Penal Code is amended to read:

298.1. (a) As of the effective date of this chapter, any person who refuses to give any or all of the following, blood specimens, saliva samples, or thumb or palm print impressions as required by this chapter, once he or she has received written notice from the Department of Justice, the Department of Corrections *and Rehabilitation*, any law enforcement personnel, or officer of the court that he or she is required to provide specimens, samples, and print impressions pursuant to this chapter is guilty of a misdemeanor. The refusal or failure to give any or all of the following, a blood specimen, saliva sample, or thumb or palm print impression is punishable as a separate offense by both a fine of five hundred dollars (\$500) and imprisonment of up to one year in a county jail, or if the person is already imprisoned in the state prison, by sanctions for misdemeanors according to a schedule determined by the Department of Corrections *and Rehabilitation*.

(b) (1) Notwithstanding subdivision (a), authorized law enforcement, custodial, or corrections personnel, including peace officers as defined in Sections 830, 830.1, subdivision (d) of Section 830.2, Sections 830.5, 830.38, or 830.55, may employ reasonable force to collect blood specimens, saliva samples, or thumb or palm print impressions pursuant to this chapter from individuals who, after written or oral request, refuse to provide those specimens, samples, or thumb or palm print impressions.

(2) The withdrawal of blood shall be performed in a medically approved manner in accordance with the requirements of paragraph (2) of subdivision (b) of Section 298.

(3) The use of reasonable force as provided in this subdivision shall be carried out in a manner consistent with regulations and guidelines adopted pursuant to subdivision (c).

(c) (1) The Department of Corrections *Rehabilitation* and the ~~Department of the Youth Authority~~ *Division of Juvenile Justice* shall adopt regulations governing the use of reasonable force as provided in subdivision (b), which shall include the following:

1 (A) The term “use of reasonable force” shall be defined as the
2 force that an objective, trained and competent correctional
3 employee, faced with similar facts and circumstances, would
4 consider necessary and reasonable to gain compliance with this
5 chapter.

6 (B) The use of reasonable force shall not be authorized
7 without the prior written authorization of the supervising officer
8 on duty. The authorization shall include information that reflects
9 the fact that the offender was asked to provide the requisite
10 specimen, sample, or impression and refused.

11 (C) The use of reasonable force shall be preceded by efforts to
12 secure voluntary compliance with this section.

13 (D) If the use of reasonable force includes a cell extraction, the
14 regulations shall provide that the extraction be videotaped.

15 (2) ~~The Board of Corrections~~ *Corrections Standards Authority*
16 shall adopt guidelines governing the use of reasonable force as
17 provided in subdivision (b) for local detention facilities, which
18 shall include the following:

19 (A) The term “use of reasonable force” shall be defined as the
20 force that an objective, trained and competent correctional
21 employee, faced with similar facts and circumstances, would
22 consider necessary and reasonable to gain compliance with this
23 chapter.

24 (B) The use of reasonable force shall not be authorized
25 without the prior written authorization of the supervising officer
26 on duty. The authorization shall include information that reflects
27 the fact that the offender was asked to provide the requisite
28 specimen, sample, or impression and refused.

29 (C) The use of reasonable force shall be preceded by efforts to
30 secure voluntary compliance with this section.

31 (D) If the use of reasonable force includes a cell extraction, the
32 extraction shall be videotaped.

33 (3) The Department of Corrections *and Rehabilitation*, the
34 ~~Department of the Youth Authority~~ *Division of Juvenile Justice*,
35 and the ~~Board of Corrections~~ *Corrections Standards Authority*
36 shall report to the Legislature not later than January 1, 2005, on
37 the use of reasonable force pursuant to this section. The report
38 shall include, but is not limited to, the number of refusals, the
39 number of incidents of the use of reasonable force under this
40 section, the type of force used, the efforts undertaken to obtain

- 1 voluntary compliance, if any, and whether any medical attention
- 2 was needed by the prisoner or personnel as a result of force being
- 3 used.

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